

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 800

Introduced by Assembly Member Kehoe

**(Coauthors: Assembly Members Bogh, Cohn, ~~Hancock~~, ~~Laird~~
Dutton, Hancock, Laird, Leslie, Lieber, Montanez, Steinberg,
and Yee)**

**(Coauthors: Senators Alpert, Ducheny, Figueroa, Ortiz, Torlakson,
and Vasconcellos)**

February 20, 2003

An act to amend ~~Sections 1785.1, 1785.25, and 1785.31~~ *Section 1785.25* of the Civil Code, relating to consumer credit.

LEGISLATIVE COUNSEL'S DIGEST

AB 800, as amended, Kehoe. Consumer credit reporting agencies: inaccurate information.

The existing Consumer Credit Reporting Agencies Act regulates the activities of consumer credit reporting agencies and establishes requirements for furnishers of credit information. The act prohibits a person from furnishing information to a consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate. A furnisher of information to a consumer credit reporting agency is required to investigate disputed information upon notice from a consumer reporting agency, as specified. ~~A furnisher of information is liable for failure to comply with these provisions unless it can show by a preponderance of the evidence that~~

~~it had reasonable procedures in place to maintain compliance. The act provides that a person damaged by a negligent violation of the act may bring an action to recover actual damages, including court costs, loss of wages, attorney's fees, and when applicable, pain and suffering, and that a person damaged by a willful violation may additionally recover punitive damages and any other relief that the court deems proper.~~

~~This bill, with respect to information supplied on or after January 1, 2005, would permit a person to furnish information to a consumer credit reporting agency only if the person reasonably should have known that the information is accurate and complete. The bill would revise the process of investigating disputed information by requiring a furnisher to correct any inaccurate information and to report any corrected information to a consumer credit reporting agency within a specified time. The bill would provide that confirming inaccurate information that was the subject of the dispute after an investigation is a violation of the act. The bill would provide that procedures to maintain compliance, as described above, are not reasonable if they permit the confirmation of inaccurate information, as specified. The bill would permit a court to award statutory damages of not less than \$2,500 to a person damaged by a negligent or willful violation of the act. The bill would also revise the statement of legislative findings.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. —Section 1785.1 of the Civil Code is amended to~~
2 *SECTION 1. Section 1785.25 of the Civil Code is amended to*
3 *read:*

4 1785.25. (a) A person shall not furnish information on a
5 specific transaction or experience to any consumer credit reporting
6 agency if the person knows or should know the information is
7 incomplete or inaccurate.

8 (b) A person who (1) in the ordinary course of business
9 regularly and on a routine basis furnishes information to one or
10 more consumer credit reporting agencies about the person's own
11 transactions or experiences with one or more consumers and (2)
12 determines that information on a specific transaction or experience
13 so provided to a consumer credit reporting agency is not complete
14 or accurate, shall promptly notify the consumer credit reporting

1 agency of that determination and provide to the consumer credit
2 reporting agency any corrections to that information, or any
3 additional information, that is necessary to make the information
4 provided by the person to the consumer credit reporting agency
5 complete and accurate.

6 (c) So long as the completeness or accuracy of any information
7 on a specific transaction or experience furnished by any person to
8 a consumer credit reporting agency is subject to a continuing
9 dispute between the affected consumer and that person, the person
10 may not furnish the information to any consumer credit reporting
11 agency without also including a notice that the information is
12 disputed by the consumer.

13 (d) A person who regularly furnishes information to a
14 consumer credit reporting agency regarding a consumer who has
15 an open-end credit account with that person, and which is closed
16 by the consumer, shall notify the consumer credit reporting agency
17 of the closure of that account by the consumer, in the information
18 regularly furnished for the period in which the account is closed.

19 (e) A person who places a delinquent account for collection
20 (internally or by referral to a third party), charges the delinquent
21 account to profit or loss, or takes similar action, and subsequently
22 furnishes information to a credit reporting agency regarding that
23 action, shall include within the information furnished the
24 approximate commencement date of the delinquency which gave
25 rise to that action, unless that date was previously reported to the
26 credit reporting agency. Nothing in this provision shall require that
27 a delinquency must be reported to a credit reporting agency.

28 (f) Upon receiving notice of a dispute noticed pursuant to
29 subdivision (a) of Section 1785.16 with regard to the completeness
30 or accuracy of any information provided to a consumer credit
31 reporting agency, the person that provided the information shall
32 ~~(1) complete an investigation with respect to the disputed~~
33 ~~information and report to the consumer credit reporting agency the~~
34 ~~results of that investigation~~ *do all of the following* before the end
35 of the 30-business-day period beginning on the date the consumer
36 credit reporting agency receives the notice of dispute from the
37 consumer in accordance with subdivision (a) of Section 1785.16
38 ~~and (2) review :~~

39 (A) *Review* relevant information submitted to it.

1 (B) Complete an investigation with respect to the disputed
2 information.

3 (C) Correct any inaccurate information.

4 (D) Report to the consumer credit reporting agency the results
5 of the investigation and any corrected information.

6 (2) Confirming inaccurate information that was the subject of
7 the dispute after an investigation is a violation of this title.

8 (g) A person who furnishes information to a consumer credit
9 reporting agency is liable for failure to comply with this section,
10 unless the furnisher establishes by a preponderance of the evidence
11 that, at the time of the failure to comply with this section, the
12 furnisher maintained reasonable procedures to comply with those
13 provisions.

14 read:

15 ~~1785.1. The Legislature finds and declares as follows:~~

16 ~~(a) An elaborate mechanism has been developed for~~
17 ~~investigating and evaluating the credit worthiness, credit standing,~~
18 ~~credit capacity, and general reputation of consumers.~~

19 ~~(b) Consumer credit reporting agencies have assumed a vital~~
20 ~~role in assembling and evaluating consumer credit and other~~
21 ~~information on consumers.~~

22 ~~(c) There is a need to insure that consumer credit reporting~~
23 ~~agencies exercise their grave responsibilities with fairness,~~
24 ~~impartiality, and a respect for the consumer's right to privacy.~~

25 ~~(d) It is the purpose of this title to require that consumer credit~~
26 ~~reporting agencies adopt reasonable procedures for meeting the~~
27 ~~needs of commerce for consumer credit, personnel, insurance,~~
28 ~~housing of a dwelling unit, and other information in a manner which~~
29 ~~is fair and equitable to the consumer, with regard to the~~
30 ~~confidentiality, accuracy, relevancy, and proper utilization of such~~
31 ~~information in accordance with the requirements of this title.~~

32 ~~(e) The Legislature hereby intends to regulate consumer credit~~
33 ~~reporting agencies pursuant to this title in a manner which will best~~
34 ~~protect the interests of the people of the State of California. The~~
35 ~~provisions of this title supplement the requirements of the Federal~~
36 ~~Fair Credit Reporting Act (15 U.S.C. 1681 et. seq.) and provide~~
37 ~~consumers with additional protections, including, but not limited~~
38 ~~to, protection against the presence of erroneous information in~~
39 ~~their consumer credit reporting files.~~

1 ~~(f) The extension of credit is a privilege and not a right. Nothing~~
2 ~~in this title shall preclude a creditor from denying credit to any~~
3 ~~applicant providing such denial is based on factors not inconsistent~~
4 ~~with present law.~~

5 ~~(g) Any clauses in contracts which prohibit any action required~~
6 ~~by this title are not in the public interest and shall be considered~~
7 ~~unenforceable. This shall not invalidate the other terms of such a~~
8 ~~contract.~~

9 ~~SEC. 2.—Section 1785.25 of the Civil Code is amended to read:~~

10 ~~1785.25.—(a) A person shall furnish information on a specific~~
11 ~~transaction or experience to a consumer credit reporting agency~~
12 ~~only if the person reasonably should have known that the~~
13 ~~information is accurate and complete.~~

14 ~~(b) A person who (1) in the ordinary course of business~~
15 ~~regularly and on a routine basis furnishes information to one or~~
16 ~~more consumer credit reporting agencies about the person's own~~
17 ~~transactions or experiences with one or more consumers and (2)~~
18 ~~determines that information on a specific transaction or experience~~
19 ~~so provided to a consumer credit reporting agency is not complete~~
20 ~~or accurate, shall promptly notify the consumer credit reporting~~
21 ~~agency of that determination and provide to the consumer credit~~
22 ~~reporting agency any corrections to that information, or any~~
23 ~~additional information, that is necessary to make the information~~
24 ~~provided by the person to the consumer credit reporting agency~~
25 ~~complete and accurate.~~

26 ~~(c) So long as the completeness or accuracy of any information~~
27 ~~on a specific transaction or experience furnished by any person to~~
28 ~~a consumer credit reporting agency is subject to a continuing~~
29 ~~dispute between the affected consumer and that person, the person~~
30 ~~may not furnish the information to any consumer credit reporting~~
31 ~~agency without also including a notice that the information is~~
32 ~~disputed by the consumer.~~

33 ~~(d) A person who regularly furnishes information to a~~
34 ~~consumer credit reporting agency regarding a consumer who has~~
35 ~~an open end credit account with that person, and which is closed~~
36 ~~by the consumer, shall notify the consumer credit reporting agency~~
37 ~~of the closure of that account by the consumer, in the information~~
38 ~~regularly furnished for the period in which the account is closed.~~

39 ~~(e) A person who places a delinquent account for collection~~
40 ~~(internally or by referral to a third party), charges the delinquent~~

1 account to profit or loss, or takes similar action, and subsequently
2 furnishes information to a credit reporting agency regarding that
3 action, shall include within the information furnished the
4 approximate commencement date of the delinquency which gave
5 rise to that action, unless that date was previously reported to the
6 credit reporting agency. Nothing in this provision shall require that
7 a delinquency must be reported to a credit reporting agency.

8 (f) (1) Upon receiving notice of a dispute noticed pursuant to
9 subdivision (a) of Section 1785.16 with regard to the completeness
10 or accuracy of any information provided to a consumer credit
11 reporting agency, the person that provided the information shall do
12 all of the following before the end of the 30-business-day period
13 beginning on the date the consumer credit reporting agency
14 receives the notice of dispute from the consumer in accordance
15 with subdivision (a) of Section 1785.16:

16 (A) Review relevant information submitted to it.

17 (B) Complete an investigation with respect to the disputed
18 information.

19 (C) Correct any inaccurate information.

20 (D) Report to the consumer credit reporting agency the results
21 of the investigation and any corrected information.

22 (2) Confirming inaccurate information after an investigation is
23 a violation of this title.

24 (g) A person who furnishes information to a consumer credit
25 reporting agency is liable for failure to comply with this section,
26 unless the furnisher establishes by a preponderance of the evidence
27 that, at the time of the failure to comply with this section, the
28 furnisher maintained reasonable procedures to comply with those
29 provisions. Procedures are not reasonable if they permit
30 confirmation of information that is inaccurate, including, but not
31 limited to, procedures that permit confirmation of information
32 about a consumer without determining that information in fact
33 relates to that consumer.

34 (h) The amendments made to subdivision (a) by the act adding
35 this subdivision shall apply to all information that is supplied to a
36 consumer credit reporting agency on or after January 1, 2005.

37 SEC. 3.—Section 1785.31 of the Civil Code is amended to read:

38 1785.31.—(a) Any consumer who suffers damages as a result
39 of a violation of this title by any person may bring an action in a

1 court of appropriate jurisdiction against that person to recover the
2 following:

3 ~~(1) In the case of a negligent violation, actual damages,~~
4 ~~statutory damages of not less than two thousand five hundred~~
5 ~~dollars (\$2,500), court costs, loss of wages, attorney's fees and,~~
6 ~~when applicable, pain and suffering.~~

7 ~~(2) In the case of a willful violation:~~

8 ~~(A) Damages as set forth in paragraph (1) above.~~

9 ~~(B) Punitive damages of not less than one hundred dollars~~
10 ~~(\$100) nor more than five thousand dollars (\$5,000) for each~~
11 ~~violation as the court deems proper.~~

12 ~~(C) Any other relief that the court deems proper.~~

13 ~~(3) In the case of liability of a natural person for obtaining a~~
14 ~~consumer credit report under false pretenses or knowingly without~~
15 ~~a permissible purpose, an award of actual damages pursuant to~~
16 ~~paragraph (1) or subparagraph (A) of paragraph (2) shall be in an~~
17 ~~amount of not less than two thousand five hundred dollars~~
18 ~~(\$2,500).~~

19 ~~(b) Injunctive relief shall be available to any consumer~~
20 ~~aggrieved by a violation or a threatened violation of this title~~
21 ~~whether or not the consumer seeks any other remedy under this~~
22 ~~section.~~

23 ~~(c) Notwithstanding any other provision of this section, any~~
24 ~~person who willfully violates any requirement imposed under this~~
25 ~~title may be liable for punitive damages in the case of a class action,~~
26 ~~in an amount that the court may allow. In determining the amount~~
27 ~~of award in any class action, the court shall consider among~~
28 ~~relevant factors the amount of any actual damages awarded, the~~
29 ~~frequency of the violations, the resources of the violator and the~~
30 ~~number of persons adversely affected.~~

31 ~~(d) Except as provided in subdivision (e), the prevailing~~
32 ~~plaintiffs in any action commenced under this section shall be~~
33 ~~entitled to recover court costs and reasonable attorney's fees.~~

34 ~~(e) If a plaintiff brings an action pursuant to this section against~~
35 ~~a debt collector, as defined in subdivision (c) of Section 1788.2,~~
36 ~~and the basis for the action is related to the collection of a debt,~~
37 ~~whether issues relating to the debt collection are raised in the same~~
38 ~~or another proceeding, the debt collector shall be entitled to~~
39 ~~recover reasonable attorney's fees upon a finding by the court that~~
40 ~~the action was not brought in good faith.~~

- 1 ~~(f) If a plaintiff only seeks and obtains injunctive relief to~~
2 ~~compel compliance with this title, court costs and attorney's fees~~
3 ~~shall be awarded pursuant to Section 1021.5 of the Code of Civil~~
4 ~~Procedure.~~
5 ~~(g) Nothing in this section is intended to affect remedies~~
6 ~~available under Section 128.5 of the Code of Civil Procedure.~~

